

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of
the City of Mill Valley for Review
of Order No. 74-207 (NPDES Permit
No. CA0037711), California Regional
Water Quality Control Board, San
Francisco Bay Region

Order No. WQ 76-3

BY THE BOARD:

On December 17, 1974, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), adopted Order No. 74-207 (NPDES Permit No. CA0037711), waste discharge requirements for the City of Mill Valley, Marin County. The City provides sewage service within its own boundaries and treats sewage from Alto Sanitary District, Kay Park Sewer Maintenance District, Almonte Sanitary District and Hamestead Valley Sanitary District. The treated effluent is discharged through an outfall into the northern end of Richardson Bay, a part of San Francisco Bay.

The City, by letter of protest dated January 16, 1975, filed a petition for review of Order No. 74-207. On January 31, 1975, the City filed an amended petition for review.

CONTENTIONS AND FINDINGS

1. Contention

The expiration date of the order, which is only 20 months from the adoption date, is prejudicial and discriminatory

as other waste discharge requirements expire after five years.

Discussion and Finding

Order No. 74-207 will expire on August 1, 1976, some 20 months after adoption by the Regional Board. The Federal Water Pollution Control Act and federal and state regulations provide that NPDES permits may be issued for some fixed term not to exceed five years. (FWPCA, Section 402(b)(1)(B); 40 C.F.R. 125.41; Section 2235.7, Subchapter 9, Chapter 3, Title 23, California Administrative Code). There is no statutory nor regulatory requirement which prescribes any minimum duration for an NPDES permit. The hearing record before the Regional Board discloses that the City is actively involved in a subregional study for Marin County dischargers which could substantially affect future discharges of the City. The project report involving consolidated facilities is due in early 1976. The Regional Board indicated that it felt that mid-1976 would be an appropriate time to review the requirements involved so as to take into account the results of the subregional study. The permit expiration date was clearly related to the subregional study process.

Consequently, we find that the duration of the permit issued by the Regional Board in this case plainly falls within the Regional Board's statutory authority, is not for an unreasonably short length of time, and constitutes a proper exercise of discretion by the Regional Board on permit duration.

2. Contention

The permit effluent limitations for settleable matter, BOD, suspended solids, heavy metals, and receiving water limitations for floating matter or foam and nondissociated ammonium hydroxide are unreasonable.

Discussion and Findings

The NPDES permit requires compliance with effluent BOD and receiving water floating matter or foam in accordance with Regional Board Orders Nos. 71-34 (cease and desist order) and 71-13 (waste discharge requirements). The State Water Resources Control Board (State Board) in Order No. 71-27, in response to the petition for review filed by Jeffory Morshead and others, found Regional Board Order No. 71-34 to be appropriate and denied the petition. That petition involved the matter of the reasonableness of the above two limitations.

Regional Board Orders Nos. 71-34 and 71-13 were then challenged by writs of mandamus and judgment was entered in favor of the Regional Board by the San Francisco County Superior Court on September 5, 1973. The Superior Court judgment was affirmed by the California Court of Appeal, First Appellate District, on January 21, 1975. (See Morshead v. California Regional Water Quality Control Board, 45 Cal.App.3d 442).

Consequently, the State Board again affirms the reasonableness of the limitations for effluent BOD and receiving water floating matter or foam.

Compliance with the effluent limitation for suspended solids, heavy metals and with the receiving water nondissociated ammonium hydroxide limitation is required in accordance with time schedules. The City was to submit a program and time schedule for compliance by January 15, 1976. The suspended solids limitation is consistent with the BOD limitation imposed and is the parameter customarily used where less than 10:1 dilution is available and where there are shellfish beds to protect, as is the case in Richardson Bay. The heavy metals requirements are identical to those contained in the water quality control plan for ocean waters of California. The nondissociated ammonium hydroxide limitation is identical to the nonionized limitation contained in the applicable water quality control plan. The record contains sufficient evidence regarding the appropriateness of these limitations, and we find that they are appropriate. Standards and limitations more stringent than secondary treatment limitations and standards are permitted under Water Code Section 13379.

3. Contention

One of the provisions of Order No. 74-207 unlawfully specifies design, location, type of construction and manner of compliance and precludes compliance with a discharge prohibition contained in the permit.

Discussion and Findings

The provision in question, D.6, provides as follows:

"If the discharger elects to comply with the specifications of this Order listed in provision D.2.a. by construction of separate treatment plant improvements and outfall rather than by participation in the Sub-regional Treatment and Disposal Program, this Board

will consider adoption of more stringent requirements and/or prohibitions to protect shellfish beds for the harvesting of shellfish for human consumption."

Water Code Section 13360 provides that no waste discharge requirement shall specify the design, location, type of construction or manner of compliance. The hearing record shows that the City is actively involved in the subregional study and is uncertain regarding future manner of treatment and discharge location. It further appears from the record that the Regional Board shellfish policy should be implemented in future requirements if the point of discharge is to a shellfish area.

Water Code Section 13381 provides that requirements may be modified for cause. Based upon the above factors, we find that provision D.6 is appropriate and certainly does not specify design, location, type of construction or manner of compliance.

The City further argues that the above provision D.6 precludes compliance with discharge prohibition C.1 which provides as follows:

"Discharge within 200 feet offshore from the extreme low water line is prohibited."

A review of the record fails to support this argument. Provision D.6 and prohibition C.1 are consistent. The City has been granted a period of time to choose among the available discharge alternatives and has been given some indication of applicable standards. The record does not show a lack of water quality problems, but to the contrary, indicates many problems to be resolved in the future. We find this argument to be without merit.

CONCLUSION

After review of the record, and consideration of all the contentions of the City, and for the reasons discussed in this order, the State Board concludes that the action of the Regional Board in adopting Order No. 74-207 was appropriate and proper.

NOW THEREFORE IT IS ORDERED that the petition for review of Order No. 74-207 is denied.

Dated: March 18, 1976

/s/ W. W. Adams
W. W. Adams, Chairman

/s/ W. Don Maughan
W. Don Maughan, Vice Chairman

/s/ Roy E. Dodson
Roy E. Dodson, Member

/s/ Jean Auer
Jean Auer, Member